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Attorneys for Defendant  
CITY OF BURBANK, including the Police  
Department of the City of Burbank

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN;  
ELFEGO RODRIGUEZ; AND JAMAL  
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT;  
CITY OF BURBANK; TIM STEHR;  
KERRY SCHILF; JAMIE "J.J." PUGLISI;  
DAN YADON; KELLY FRANK; PAT  
LYNCH; MIKE PARRINELLO; AARON  
KENDRICK; DARIN RYBURN; AND  
DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602  
[Hon. Joanne O'Donnell, Dept. 37]

**DEFENDANT CITY OF BURBANK'S  
OPPOSITION TO PLAINTIFFS' EX  
PARTE APPLICATION FOR AN  
ORDER TO CONTINUE THE  
HEARING DATE FOR DEFENDANT  
CITY OF BURBANK'S MOTION  
FOR SUMMARY JUDGMENT, OR  
IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION OF  
ISSUES AGAINST PLAINTIFF  
STEVE KARAGIOSIAN**

Date: June 18, 2010  
Time: 9:00  
Dept.: 37  
Trial: Aug. 25, 2010  
Action filed: May 28, 2009

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1 Defendant and Cross-Complainant City of Burbank, including the Police Department  
2 of the City of Burbank ("Burbank") hereby opposes Plaintiff Steve Karagiosian's  
3 ("Karagiosian") *ex parte* application to continue the date set for hearing on Defendant's  
4 Motion for Summary Judgment ("Application"). Although, as of the time of this writing,  
5 Karagiosian has provided no notice as to the grounds of for his Application, based on the  
6 application Karagiosian's co-plaintiff Cindy Guillen-Gomez made to the Court just last  
7 week, Burbank presumes that – like Ms. Guillen-Gomez' motion – Karagiosian's motion will  
8 be based on Code of Civil Procedure Section 437c(h), which permits a court to continue a  
9 hearing on a motion for summary judgment "[i]f it appears from the affidavits submitted in  
10 opposition to a motion for summary judgment . . . that facts essential to justify opposition  
11 may exist but cannot, for reasons stated, then be presented."

12 Last week, this Court strongly *rejected* the arguments of plaintiff Guillen-Gomez that  
13 she needed additional time to conduct discovery, ruling that she had failed to make the  
14 required showing under CCP §437c(h), that: "(1) the facts to be obtained are essential to  
15 opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons  
16 why additional time is needed to obtain these facts." (*See* the Court's June 11, 2010 Minute  
17 Order, a copy of which is attached hereto as Exhibit A.)<sup>1</sup> Specifically, the Court held:

18 "The kind of broad-sweeping discovery plaintiff seeks to  
19 conduct now is the kind of discovery that *should be conducted*  
20 *in the early phases of litigation, not on the eve of the hearing*  
21 *on defendants' summary judgment motion.* . . . An  
22 inappropriate delay in seeking to obtain the facts may not be a  
23 valid reason why the facts cannot then be presented." . . . *This*  
24 *action has been pending for over a year.* The only explanation

23 <sup>1</sup> Although the Court rejected Guillen-Gomez' petition on her asserted grounds, it  
24 granted a continuance "for the sole reason that defendant's motion [for summary judgment  
25 against Guillen-Gomez] appears to be exceptionally burdensome." The Court has made no  
26 such finding as to the summary judgment motion against Karagiosian, nor would such a  
27 finding be warranted. According to Guillen Gomez' *ex parte* application, the moving papers  
28 for summary judgment against her contained "75 separate issues and 729 alleged undisputed  
facts in their 399 page Separate Statement of Undisputed Facts." **In contrast, the moving  
papers for summary judgment against Karagiosian contain only seven separate issues  
and 174 undisputed facts, and the Separate Statement is 36 pages.**

1 plaintiff's counsel's declaration offers for the failure to conduct  
2 discovery necessary to oppose defendant's motion is his belief  
3 that he had all the evidence he needed, which belief was shown  
4 to be erroneous by the court's rulings on the Childs and Elfego  
5 Rodriguez MSJs. The court is aware of no authority for the  
6 proposition that counsel's decision to modify his litigation  
7 strategy based on the court's rulings entitles his client to  
8 additional time to conduct discovery."

9 (Exh. A at 2-3, emphasis added, citations omitted.)

10 The Court's reasoning is equally applicable to the instant *ex parte* petition of  
11 Karagiosian. There is simply no basis for concluding that Plaintiff's counsel was any more  
12 diligent in pursuing discovery related to Karagiosian's claims than he was as to Guillen-  
13 Gomez' claims. After a year of litigating this case, there are no essential facts related to the  
14 issues addressed in Burbank's motion for summary judgment against Karagiosian that he has  
15 not had ample time to discover before now or will not be able to discover before his  
16 opposition is due on July 6, 2010. He has not specified to date any additional discovery  
17 which would allow his claims to survive summary judgment.

18 Moreover, Karagiosian's actual basis for seeking a continuance here is *precisely the*  
19 *same as with the Guillen-Gomez petition for continuance, i.e.,* counsel's belated realization  
20 that there is no admissible evidence which supports his clients' claims. The Court has  
21 *already ruled* that this is *not* sufficient grounds for continuing a motion for summary  
22 judgment.

23 Because Karagiosian cannot show that facts essential to defeat summary judgment  
24 may exist and that he was diligent in conducting discovery, his *ex parte* application to  
25 continue the hearing on Burbank's summary judgment motion must be denied.

26 DATED: June 17, 2010

BALLARD ROSENBERG GOLPER & SAVITT, LLP

27 By:



LINDA MILLER SAVITT

Attorneys for Defendant

CITY OF BURBANK, including the Police Department of  
the City of Burbank



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/11/10

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE  
11.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am BC414602

Plaintiff Robert C. Hayden ✓  
Counsel RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant Lawrence A. Michaels ✓  
Counsel MITCHELL SILBERBERG ET AL

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

EX PARTE APPLICATION OF PLAINTIFF CINDY GUILLEN-GOMEZ  
TO CONTINUE HEARING ON MOTION FOR SUMMARY JUDGMENT;

The court reads and considers the ex parte  
application and the opposition thereto.

Matter is called for hearing in open court. The  
court announces its tentative ruling and counsel  
review the written tentative ruling. The court  
hears from counsel. The tentative ruling issues as  
the order of the court as follows:

The ex parte application of plaintiff Cindy Guillen-  
Gomez to continue the hearing on defendants' Motion  
for Summary Judgment is granted for the sole reason  
that defendant's motion appears to be exceptionally  
burdensome. The hearing on the motion is continued  
to August 13, 2010, at 9:00 a.m. in this department.  
Opposition to be filed by July 19, 2010. Reply to  
be filed pursuant to code.

The application is denied, however, on the asserted  
grounds that plaintiff needs additional time to  
conduct discovery. Plaintiff's counsel's  
declaration fails to demonstrate that the hearing  
should be continued pursuant to CCP §437c(h).  
First, the declaration fails to show the need for a  
continuance. "A declaration in support of a request  
for continuance under section 437c, subdivision (h)  
must show: '(1) the facts to be obtained are

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## NATURE OF PROCEEDINGS:

essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts.'" Cooksey v. Alexakis (2004) 123 Cal. App.4th 246, 254 (citing Wachs v. Curry (1993) 13 Cal.App.4th 616, 623). Plaintiff's ex parte application fails to identify the facts to be obtained from further discovery or that they are essential to opposing defendant's summary judgment motion. Counsel's claim that he only recently learned of "numerous witnesses who have additional information which bears upon Plaintiff Cindy Guillen Gomez's case" is too vague to satisfy the requirements of CCP §437c(h). Counsel fails to show how the discovery he seeks "has direct bearing upon the decision-making process for Cindy Guillen Gomez's pregnancy related issues, as well as, firming up specific harassing conduct which occurred within the statute of limitations. Counsel's declaration fails to state what evidence he expects to obtain by deposing the ten witnesses listed "and others." The kind of broad-sweeping discovery plaintiff seeks to conduct now is the kind of discovery that should be conducted in the early phases of litigation, not on the eve of the hearing on defendants' summary judgment motion.

The ex parte application must be denied for the additional reason that counsel's declaration fails to explain why additional time is needed to obtain the facts he claims are essential to defeat summary

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R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

judgment. "There must be a justifiable reason why the essential facts cannot be presented. An inappropriate delay in seeking to obtain the facts may not be a valid reason why the facts cannot then be presented." Cooksey, supra, at 257. This action has been pending for over a year. The only explanation plaintiff's counsel's declaration offers for the failure to conduct discovery necessary to oppose defendant's motion is his belief that he had all the evidence he needed, which belief was shown to be erroneous by the court's rulings on the Childs and Elfego Rodriguez MSJs. The court is aware of no authority for the proposition that counsel's decision to modify his litigation strategy based on the court's rulings entitles his client to additional time to conduct discovery.

Because plaintiff has failed to show, through her affidavits, that facts essential to defeat summary judgment may exist and that she was diligent in completing discovery, her ex parte application to continue the hearing on defendants' summary judgment motion must be denied.

Counsel for plaintiff to give notice.